

Dl September
9. 2, 2021

Through Video Conference

W.P.S.T. 81 of 2017

Sri Amar Singh Harizon
Vs.
State of West Bengal & ors.

Mr. Biswaroop Bhattacharya,
Mr. Surya Prosad Chatterjee,
Mr. Mohan Lall Banerjee,
...for the petitioner.

Ms. Chaitali Bhattacharya,
...for the State respondents.

This writ petition has arisen out of an order dated February 22, 2017 passed by the West Bengal Administrative Tribunal in Original Application No. 712 of 2013 filed by the writ petitioner challenging the amended recruitment rules as notified on May 31, 2011. The issue before the tribunal is summarized in the first paragraph of the impugned judgment itself, which reads thus :-

“The short point involved in this application is whether the amendment of the recruitment rules for the post of Joint Director of Tourism in the Directorate of Tourism under the Tourism Department, Government of West Bengal made under notification no. 357-TW dated 31.05.2011 is unconstitutional and illegal.”

We have heard the learned advocates appearing for the parties. The amendment to the recruitment rules was made in exercise of powers conferred under the proviso to Article 309 of the Constitution of India. The original recruitment rule contemplates

three methods of recruitment, which are all disjunctive. One of the methods of recruitment for the purpose of recruitment to the post of Joint Director of Tourism as contemplated in the said rule amongst others is that ***by transfer from WBCS (Executive) carrying scale of pay comparable to that of Joint Director of Tourism***. Out of the three methods of recruitment, two were abolished and only the third method of recruitment was accepted as the only mode in the amended recruitment rules, which was duly notified on May 31, 2011.

It is argued on behalf of the writ petitioner that although it may be accepted as a proposition of law that a candidate may not have a vested right for promotion, but if it is found that his chance of promotion is taken away by the amendment to the recruitment rules, the same can be challenged as contrary to Articles 14 and 16 of the Constitution of India. It is further argued that the recruitment rule was amended so that a person having background that of the writ petitioner ultimately does not get the post by promotion.

However, from the pleadings before the tribunal, we do not find that any such case was made out before the tribunal that the recruitment rule was amended in order to accommodate any particular person to the post of Joint Director of Tourism.

The State respondents before the tribunal had contended that having regard to the importance of the Tourism Sector, the Government decided to fill up the post by transfer of West Bengal Civil Services (Executive) officers, who have wide experience in different fields of administration. It was further

contended that it is entirely at the option of the Government to decide as to how the post of Joint Director is to be filled up.

In the absence of anything to show that the post in question had all along been filled up by promotion of departmental officers, the option exercised by the Government in favour of the third method of recruitment as mentioned in the original rule and finally to decide that it would be the only mode of recruitment cannot be held to be arbitrary or discriminatory. In fact, in terms of the original recruitment rules, the petitioner had only a chance to be considered for promotion. As observed by the Hon'ble Supreme Court in the case of **Reserve Bank of India & ors. vs. C.S. Sahasranaman & ors.** reported in **A.I.R. 1986 S.C. 1830**, no scheme governing service matters could be said to be foolproof and some section or the other of the employees was bound to feel aggrieved on the score of its expectation being falsified or remaining to be fulfilled. However, if the scheme appears to be arbitrary, irrational or perverse, then the court always have the jurisdiction to set aside such recruitment rules or the scheme.

The Government has to run the administration and the Government is the best judge to decide the method of recruitment, creation and/or abolition of posts, prescription of qualification, structuring and/or restructuring of cadres, etc. What steps would be taken for improving the efficiency of the administration also falls within the exclusive domain of the employer. In a judicial review, this court is not competent to decide what kind of expertise or experience is required for the post of Joint Director but only to observe that the amendment in the recruitment rules by way of

notification for the post of Joint Director does not appear to be arbitrary or unconstitutional. Moreover, the court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving the efficiency of the administration.

On such consideration, we do not find any reason to interfere with the order passed by the tribunal.

The writ application, thus, fails without, however, any order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

(Hiranmay Bhattacharyya, J.)

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